

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>ROBERT I. OZIEL</b>	:	DETERMINATION
	:	DTA #814380
for Redetermination of a Deficiency or for Refund of	:	
Personal Income Tax under Article 22 of the Tax Law	:	
for the Year 1989.	:	

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Petitioner, Robert I. Oziel, 4 Sherwood Gate, Oyster Bay, New York 11771, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the Year 1989.

A hearing was held before Catherine M. Bennett, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York, on June 21, 1996 at 10:00 A.M., with all briefs to be submitted by May 19, 1997, which date began the six-month period for the issuance of this determination. Petitioner appeared *pro se*. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Michael J. Glannon, Esq., of counsel).

ISSUE

Whether the Division of Taxation properly assessed petitioner personal income tax on unreported partnership income.

FINDINGS OF FACT

1. The Division of Taxation ("Division") issued to Robert Oziel ("petitioner") a Notice of Deficiency dated June 21, 1993, asserting additional income tax due in the amount of

\$15,592.69, plus penalty and interest, in the amounts of \$6,965.33 and \$4,575.12, respectively, for a total of \$27,133.14, for the year 1989.

2. Petitioner was provided a Statement of Audit Adjustment dated May 10, 1993, detailing the computation of the proposed tax due as follows:

Capital Gain	\$ 105,143.00
Partnerships, Estates, Trusts & S Corporations	<u>97,415.00</u>
New York Taxable Income	<u>\$ 202,558.00</u>
Tax on New York Taxable Income	15,592.69
Tax Per Taxpayer	0.00
Tax Per Dept. of Tax and Finance	15,592.69
Timely Payments/Credits	0.00
Late Payments	0.00
Amount previously Assessed/Refunded	<u>0.00</u>
Balance	<u>\$ 15,592.69</u>

3. During the latter part of 1994 and early in 1995, petitioner's tax records for several years, including 1989, were reviewed by the Internal Revenue Service ("IRS"). During March or April, 1995, petitioner claims to have finalized the tax computations with an IRS representative for the 1989 tax year. The IRS issued a Request for Tax Payment form dated July 24, 1995 for the 1989 tax period indicating petitioner had underpaid his tax liability by \$8,871.12. No explanation was provided as to the basis for the total tax computed in the amount of \$8,884.12.

4. The Division requested that petitioner provide proof that he, in fact, filed a 1989 return with the IRS, or some proof that he and the IRS agreed to a final Federal income tax liability for that year.

5. During the hearing of this matter, petitioner requested 60 days post-hearing to present confirmation from the IRS that it had accepted the tax figures asserted by petitioner for his 1989 Form 1040, which he intended to rely upon for the preparation of his New York State return for 1989.

6. Petitioner prepared and submitted to the Division his 1989 New York State Resident Income Tax Return, Form IT-201, dated June 20, 1996, based on his Federal tax return figures, with correspondence dated July 15, 1996. The New York tax shown on the return is \$ 2,629.53. The correspondence indicated that petitioner was attempting to reschedule his meeting with Mr. Garfield of the IRS in order to acquire a copy of his 1989 Federal return, which he had been requested to have certified by the IRS as bearing final tax figures.

7. On August 16, 1997, petitioner again corresponded with the Division stating that he had been unable to meet with Mr. Garfield to obtain a copy of the 1989 Federal return. Petitioner then submitted correspondence dated August 22, 1996, attached to which was a computer generated printout dated August 23, 1996. The printout, now a part of this record, is not identified as an IRS document. Although the document contains certain monetary amounts that correspond to the 1989 Form 1040 introduced as evidence, such information is set forth in a section of the printout entitled "Posted Return Information". All the information on the printout is coded and most of the abbreviations are not decipherable, or at least, cannot be identified with any certainty. Petitioner did not include an explanation of the data contained on the printout.

8. During September and October, 1996, the parties entered into settlement negotiations. Petitioner submitted payment to the Division in the amount of \$2,629.53 pursuant to a proposed settlement. By early November 1996, negotiations to settle the matter had not been completed, and the Division rejected the purported IRS printout as verification of amounts accepted by the IRS without further explanation of the computer form. Petitioner was provided with a final opportunity to have the IRS identify the printout and provide an explanation of the data, or submit a certified copy of the tax return filed and accepted as final by the IRS for 1989.

9. Petitioner's final submission of information into the record included copies of his 1989 Federal and New York State income tax returns, neither of which were certified as the documents finally accepted by each agency. No explanation of the computer printout was provided.

SUMMARY OF THE PARTIES' POSITIONS

10. Petitioner maintains that for the 1989 tax year, two Federal partnership K-1s were filed on his behalf, and although the partnership income was reported in different amounts, the issuance of two K-1s represented a duplication of income reported to the IRS in his name. Petitioner asserts that, in resolving this problem with the IRS, an agent prepared his 1989 Form 1040, and it is a copy of such form that he submitted as part of the record, and upon which he relied for the computation of his 1989 New York State liability.

11. The Division contends petitioner has failed to substantiate the fact that the IRS accepted petitioner's Federal tax return as it was submitted into the record. Accordingly, the Division maintains that petitioner has not carried his burden of proving that the assessment in issue is erroneous, and thus, the Division stands by its assessment without modification.

CONCLUSIONS OF LAW

A. Tax Law § 689(e) states, in pertinent part: "In any case before the tax commission under this article, the burden of proof shall be upon the petitioner," with the exception of four situations not applicable herein. Thus, in this matter it is incumbent upon petitioner to shoulder the burden of proving that the Division's assessment is erroneous.

Petitioner did not attempt to introduce documentation to prove the validity of the action taken by the IRS, except a printout which was not in any way identified as an IRS-generated document. The evidence submitted by petitioner did not satisfactorily verify the amount of partnership income reported on his behalf for 1989, or prove that the IRS accepted the Federal

tax return figures for 1989 as presented herein. Petitioner did not otherwise attempt to verify his New York State tax return computations by independent source data. As a result of a less than adequate evidentiary submission, the Division exercised its discretion to ignore documents which it would have otherwise considered, and upheld the assessment. The failure of petitioner to sustain his burden of proof by clear and convincing evidence by the production of evidence demonstrating that the assessment was erroneous, left standing the presumption of correctness which attached to the notice of deficiency (Tax Law § 689[e]; *Matter of Leogrande v. Tax Appeals Tribunal*, 187 AD2d 768; 589 NYS2d 383, *lv denied* 81 NY2d 704, 595 NYS2d 398; *Matter of Kourakos v. Tully*, 92 AD2d 1051, 461 NYS2d 540, *appeal dismissed* 59 NY2d 967, 466 NYS2d 1030, *lv denied* 60 NY2d 556, 468 NYS2d 467, *cert denied* 464 US 1070, 79 L ED 2d 215; *Matter of Tavalacci v. State Tax Commn.*, 77 AD2d 759, 431 NYS2d 174).

B. The petition of Robert Oziel is denied, and the Notice of Deficiency dated June 21, 1993 is hereby sustained.

DATED: Troy, New York  
November 6, 1997

/s/ Catherine M. Bennett  
ADMINISTRATIVE LAW JUDGE